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State Government

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STATE GOVERNMENT

Legislative Procedure. The Statute Law Committee has succeeded the Secretary of State as promulgator of the Revised Code of Washington. In line with this authority, the Committee has also been authorized to arrange the business details of printing and publication. Incorporation into the Code of rules of court and other materials is authorized, and the Committee is charged with the duty of recommending titles of the Code for enactment into law having conclusive evidentiary authority. One limitation upon its authority, perhaps formerly implicit, has been made explicit: division and rearrangement of sections is authorized only when the meaning or effect remains unchanged.[1]

In one particular an effort has been made to get timely information to the legislators: The Highway Commission is required to have its comprehensive plan for highway development in the hands of each legislator as soon as "practical" after the November 1954 general election.[2]

The efforts of the Judicial Council and the bar association to procure enactment of the Model State Administrative Procedure Bill, or some variant thereof, have failed in recent years. One of the needs it seeks to meet is adequate information about that category of sub-legislation bearing variously the names of "ordinance, resolution, rule, regulation, order or directive." It has been pointed out that our law permits administrative agencies to act like the Roman emperor Caligula, who wrote his laws in fine print and then hung them up on pillars too high for the ordinary passerby to read.[3] The federal government started to work on this problem as early as 1935, with the Federal Register Act.[4]

Our legislature has at last provided that general, quasi-legislative action must be taken at a public meeting after notice to the public, and the record must be open to public inspection.[5] This is a laudable but feeble provision. If the date of the meeting is not fixed by law or rule, public notice must be given "by notifying press, radio and television in the county and by such other means as may now or hereafter be provided by law." However, the statute lacks any requirements prescribing the methods to be used or specifying the amount of time in advance of the meeting the notice may be given, and it seems to lack any correc-

[1] L. 1953, c. 257
[2] L. 1953, c. 254.
[3] Newman, *Government and Ignorance—A Progress Report on Publication of Federal Regulations,* 63 HARV. L. REV. 929 (1950).
[4] 49 Stat. 500, 44 U.S.C. §§ 301-314 (1946).
[5] L. 1953, c. 216.

tive against the agency's resort to making a rule setting the date, in lieu of notifying the press. Nor does the rule setting the date have to be made in advance of the date by any particular number of days. Assuming, however, that the public is alerted to the fact that a meeting will be held, is the opportunity to attend such meeting an adequate method of publishing the rule, order, etc. as made? Persons affected who are unable to attend (for one reason or another, including perhaps an overflow attendance at the meeting) must either rely upon hearsay or inspect the minutes of the meeting.

The only adequate method of publication would be by means of a published register or gazette, appearing periodically, containing rules and regulations of state agencies. Furthermore, the exemptions in this statute, though they are justifiable as far as they go, are too narrow They exclude from the requirements of the statute both the judicial and legislative branches of the government, and regulatory orders made by quasi-judicial bodies and applicable only to named parties. Also exempted should be the municipal corporations of the state, which require legislation especially adapted to their functions, and perhaps state agencies proper where their functions are of a proprietary nature, or where the matter involved relates to military affairs or to matters of internal agency or departmental management.

It is, however, a mark of progress that the Statute Law Committee is further equipped to carry out its task of making the statute law more readily available, that in one particular the legislature has taken steps to get information to its members in advance of the next regular session, and that some effort has been made to give the citizen a chance to know what the laws are to which he is subject.

Administrative Procedure. The acts of this legislature continued to increase the discretion vested in executive officers, both to make rules having the force of law and to determine whether liability for violation of law shall attach to individuals. In the latter case falls the expanded authority of the arresting officer in the case of trucks overloaded in violation of the statute. Within limits the highway patrol officer is authorized to permit the operator to proceed with his vehicle, or vehicles-in-combination, without penalty [6] Prior to amendment, the determination of the arresting officer had no effect on ultimate liability of the owner or operator for penalties for excessive weight. The criterion for

[6] L. 1953, c. 254.

the exercise of this administrative dispensing power, however, remains the same: to prevent "habitual and consistent" overloading, while recognizing that occasional weight discrepancies in cargo will occur. Furthermore, this discretion may be further guided under the rule making power vested in the Chief of the State Patrol, advised by the Director of Highways. (As elaborate a scheme as is involved in the power to make rules on such a matter as this, seems to call for completing the plan by providing for review of the arresting officer's discretion, but the statute is silent on this point.)

Another part of the statute makes provision for special permits to overload logging trucks. The State Highway Commission has charge of this work and prescribes the terms and conditions for the permits. No standard or criterion for this exercise of discretion is made explicit. In fact, the standard governing the officer's discretion as outlined above, though formerly applicable to logging trucks too, was repealed as to them.

There is another type of special permit, to carry additional gross loads in the case of three-axle truck tractors, trucks, or trailers, or two-axle trailers, previously provided by law (except as to three-axle truck tractors). The new law provides for administrative revocation or suspension of these permits, and provides for a hearing before the highway commission or its representative on such action. It lacks provisions stating when the permittee must request the hearing, where the hearing is to be held, or how the permittee is to be advised of the charges against him. It also lacks provision for judicial review of the revocation.

A similar kind of provision for administrative revocation was added to the log patrol licensing regulations. In this case, however, the hearing precedes the revocation, and the supervisor of forestry notifies the licensee of the time and place of the hearing (though there are no express limitations upon his discretion in fixing the time or the place). Again, no provision is made for judicial review. (The statute as amended extends log patrol regulation to the Columbia and its tributaries.)[7]

Somewhat more complete administrative procedures are conferred upon the new Washington State Power Commission, but since it is primarily a service agency for the development and distribution at wholesale of electrical power, it is not required in any case to hold a hearing. It is authorized to do so, however, and it is endowed with the necessary oath-administering and subpoena powers. Furthermore, its deposition

[7] L. 1953, c. 140.

procedure is to be patterned after that of the superior courts. Unfortunately, the statute is not clear which of the two methods of subpoena enforcement in use in the state is to be used by the Commission. The provision is: " and the superior court of Thurston county, upon request of the commission, may enforce each subpoena and deposition proceedings . " The state of the law in Washington would be improved if a uniform subpoena-enforcement clause were inserted into the statute of each agency having subpoena powers. The public service law provides examples of quite serviceable models.[8]

Unlike the highway and log patrol acts, this statute does provide for judicial review, though the section dealing with it (understandably enough at this time) does not undertake to prescribe the scope of review of the various types of orders. As in the previous instances, however, no limitations of venue or date of hearing at the administrative level are imposed. The same lack occurs in connection with the one administrative hearing made mandatory This is a hearing before the Director of Conservation and Development on whether the commission or another agency is to have priority on construction or acquisition of any hydro-electric facility His determination is subject to the same review procedure as the orders of the Commission. Furthermore, an ingenious device for giving other agencies an opportunity to be heard on the priority issue before the director is provided. When the Commission determines to construct or acquire the facility it is required to publish (by newspaper publication) its plan. Then any public utility in the state, or any of the constituent operating agencies of the Commission may come forward. If the Commission nevertheless decides to go ahead it must notify the Director of Conservation and Development, who must then set the date for a hearing.

The general purpose of the Commission is to develop electric power resources of the state, to integrate them when non-federal agencies are not in a position to do so, and to cooperate with other states, the United States, and Canada, with particular attention to the Columbia basin. The Commission is restricted to development and wholesale distribution, and though it is required to protect fisheries resources, it cannot be classified as a multi-purpose agency[9]

A note may be added with regard to administrative claim procedure: The thirty-day limit for claims on account of damages caused by

[8] RCW 80.04.020, *et seq.* [RRS § 10413 *et seq.*].
[9] L. 1953, c. 281.

beaver, deer, and elk was apparently found too harsh. The claimant now has ninety days within which to file his claim with the Game Department.[10]

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[10] L. 1953, c. 127.

TAXATION

Of the fourteen acts which relate directly to taxation four[1] are primarily administrative in nature, one[2] repeals an obsolete statute relating to property tax rebates, one[3] provides additional exemptions from county real estate sales tax, and one[4] provides more favorable treatment with respect to the taxation of extractors of copra. Of somewhat broader significance from a fiscal standpoint is the act[5] providing for reallocation of property tax millages under the forty-mill limitation law, and the act[6] relating to the number of electors required in special school elections held prior to November, 1954. The latter act has been the subject of recent press comment and litigation has been threatened because of uncertainty as to which "general election" is meant under the language of the act.

Of greatest significance from the standpoint of revenue is chapter 91 which extends until April 30, 1955, the "temporary" increase in the rates of business and occupation, public utilities and liquor taxes and applies the retail sales tax to the furnishing of lodging and similar services.

Among the enactments which received little, if any, attention in the press are several relating to inheritance and gift taxes. While the changes here made will have impact in only a limited number of cases the effect may be substantial in a situation to which the amendment applies.

Chapter 136 relates to inheritance tax. It establishes a new method for the evaluation of annuities, life estates, terms of years and the remainders expectant upon such present interests. The actuaries combined experience tables on the basis of four per cent annual interest

[1] L. 1953, c. 150, c. 151, c. 157 (each of which relates to motor vehicle tax enforcement), c. 240 (relating to cigarette tax). Chapter 94, § 2, also pertains to administrative procedure (allocation of funds collected) under the real estate sales tax.
[2] L. 1953, c. 103.
[3] L. 1953, c. 94, §1.
[4] L. 1953, c. 195.
[5] L. 1953, c. 175.
[6] L. 1953, c. 189.